

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**-vs-**

**TIMOTHY DEFOGGI,**

**Defendant.**

**Case No. 8:13CR105**

**BRIEF IN SUPPORT OF DEFENDANT'S  
MOTION TO SUPPRESS EVIDENCE  
OBTAINED THROUGH SEARCH OF  
DEFENDANT'S HOUSE**

COMES NOW, the Defendant, through counsel, and hereby offers this brief in support of Defendant's Motion to Suppress Evidence Obtained Through Search of Defendant's House because the search was not supported by probable cause and therefore violated Defendant's right to remain free from unreasonable searches and seizures as guaranteed under the Fourth and Fourteenth Amendments to the Constitution of the United States.

**FACTS**

On April 9th, 2013, a search warrant was executed at 20311 Crown Ridge Court, Germantown, MD. While agents secured the house, the Defendant was seen using a laptop computer. Once this computer was seized, agents observed that the

Tor Browser Bundle was running and the computer was downloading a video from a TOR hidden service known as “OPVA” (Onion Pedo Video Archive).

The warrant authorizing the search was supported by an affidavit (“Affidavit”) written by Special Agent Patricia J. Teakle of the FBI. Agent Teakle spends several pages detailing how the usernames “Ptasseater” and “fuckchrist” are connected to the Defendant. Specifically, Agent Teakle describes four main websites and other internet and social media websites and applications: 1. An image hosting website; 2. Boylover.net; 3. an open source search; and 4. Myspace. With each of the four, Agent Teakle lists associated email accounts, IP addresses, and, in the instance of boylover.net, a phone number. Through an intricate virtual web, some of these accounts and email addresses are connected to a “Tim Defoggi” (or derivative thereof) but some are not. The Affidavit uses this webbing to connect the Website A account for username “Ptasseater”/”fuckchrist” to the Defendant .

## **ARGUMENT**

### **1.The Search Warrant Lacked Probable Cause**

The Affidavit does not provide a sufficient connection between the Defendant and activities conducted on “Website A” by user “Ptasseater”/”fuckchrist” so as to support a finding of probable cause. In determining whether a search warrant is supported by probable cause, a reviewing court will look at “the totality of the circumstances”. *U.S. v. Hyer*, 498 Fed. Appx. 658, 660 (8th Cir. 2013) (citing *U.S. v. Reinholz*, 245 F.3d 765, 776 (8th Cir. 2001)(internal citations omitted). Probable

cause is sufficient if there is a “fair probability” that evidence of a crime will be found at the place searched. *Id* (internal citations omitted). A determination as to whether or not a warrant is supported by probable cause is based upon a “common sense” review of the warrant. *Id* (citing *U.S. v. Sumpter*, 669 F.2d 1215, 1218 (8th Cir. 1992)).

The search warrant in this case lacks sufficient probable cause because the affidavit fails to connect the Defendant to the username “Ptasseater”/“fuckchrist” on Website A. While there may arguably be evidence linking the Defendant to the name “ptasseater” on other websites and applications, the Affidavit presents no direct evidence that connects the Defendant to Website A; it asserts only circumstantial evidence. While circumstantial evidence may be used to support a finding of probable cause, the warrant still needs to assert sufficient evidence so as to provide a “substantial basis for a finding of probable cause”. See, *U.S. v. Wells*, 223 F.3d 835, (8th Cir. 2000). In this case, there are only three connections between the Defendant and Website A: 1. Private messages sent to and from “Ptasseater”/“fuckchrist” describing his location as in or near “DC” (Aff. pg. 11); 2. “Ptasseater”/“fuckchrist” stating in private messages that he accessed website early in the morning and later in the afternoon (Aff. pg. 11); and 3. “Numerous” similarities between the “ptasseater” account on the image hosting website and “Ptasseater”/“fuckchrist” account on Website A (Aff. pg. 12).

The first two items discuss the content of private messages but the content of not one private message is contained in the Affidavit. Moreover, the fact that someone may live in or near Washington, D.C. and may be on a website early in the morning does not connect the Defendant to the username “Ptasseater”/”fuckchrist” on Website A. Agent Teakle then spends several pages of the affidavit weaving the web of internet contacts described in the Facts section of this brief. For the following reasons, this evidence also fails to establish probable cause.

**A. There Is No Direct Connection Between The Defendant and Website A**

The affidavit does not assert one direct connection between the Defendant and Website A. Despite, during the investigation of Website A, the use of a “Network Investigative Technique” (NIT) designed to identify the IP addresses of individual users of Website A, the Affidavit does not include any IP address tying the Defendant to Website A. Nor is there any other piece of evidence tying the Defendant to Website A.

**B. The Terms “asseater” and “fuckchrist” Are Not Unique**

The probable cause Affidavit does not indicate that “PCasseater”/”fuckchrist” are not unique or explain whether these names are commonly used.

**C. The Myspace Subscriber Number 399710447 Is Not The Defendant**

On page 17 of the Affidavit, Agent Teakle states that “Additional checks conducted related to e-mail address [ptasseater@gmail.com](mailto:ptasseater@gmail.com) identified subscriber

profile 399710447 on Myspace.com (subscriber profile address: Myspace.com/399710447)." As of March 4th, 2014, typing "Myspace.com/399710447" into a search engine produces a Myspace page for one "Alex Martines", a young adult male with tan skin and dark hair. This is clearly not the Defendant. This further calls into question the reliability of the virtual webbing used in the Affidavit to connect the Defendant to username "Ptasseater" on Website A as well raises additional questions regarding how many people may be using the name.

### **CONCLUSION**

Individually, the three "connectors" are insufficient to lead a reasonably prudent person to believe that the Defendant is the person behind "Ptasseater"/"fuckchrist" on Website A. Even when combined, the Affidavit still fails to allege sufficient evidence to establish probable cause because there is no direct link between Website A and the Defendant, the terms "PTasseater" and "fuckchrist" are not unique, and the Myspace page purportedly linked to the Defendant is not the Defendant's. Because the search warrant for the Defendant's house was lacking probable cause, any and all evidence seized as a result of the search should be suppressed.

Respectfully submitted,  
Timothy Defoggi, Defendant

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon Michael Norris, Assistant U.S. Attorney and Keith A. Becker, U.S. Department of Justice, by electronically serving a copy of the same to both via CM/ECF, on this the 6<sup>th</sup> day of March, 2014.

/s/ John S. Berry  
John S. Berry, #22627